IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12744 of 2001

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARABHAI MACHINERIES - Petitioner(s)
Versus
RAMDEV RAMBHAROSA YADAV - Respondent(s)

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Appearance :
MR KM PATEL for Petitioner(s) : 1,
MR RAJESH P MANKAD for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 09/10/2007

ORAL JUDGMENT

The petitioner – Sarabhai Machineries (hereinafter referred to as, **“the Industry”**), an industry within the meaning of Section 2(j) of the

Industrial Disputes Act, 1947 (hereinafter referred to as, **“the Act”**) has preferred the present petition against the judgment and award dated 17th April, 2001 passed by the Labour Court, Vadodara in Reference LCV No.841/1992. The respondent is the delinquent workman.

For an incidence of assault by the workman on the Works Manager on 12th May, 1988, a disciplinary proceeding was held against the workman. By order dated 13th January, 1992, the imputation of charge was held to be proved. For the guilt proved against the workman, he was dismissed from service. Feeling aggrieved, the workman raised industrial dispute which came to be referred to the Labour Court, Vadodara and registered as above. According to the workman, the incidence in question had not occurred and that the workman was entitled to reinstatement in service with consequential benefits including the back-wages. The reference was contested by the Industry. The papers of the inquiry proceedings were placed before the Labour Court. Before the Labour Court, the workman did not challenge the legality of

the disciplinary proceeding held against him. However, he did challenge the finding of guilt recorded against him. The learned Labour Judge, in exercise of power conferred by Section 11A of the Act, held that the punishment of dismissal from service imposed upon the workman was too harsh and not commensurate to the guilt proved against him. Considering his long service of 18 years and otherwise clean service record, the learned Labour Judge, by impugned judgment and award, set-aside the order of dismissal from service made against the workman. The Industry was directed to reinstate the workman in service with the benefit of continuity in service and to pay him 50% of the back-wages. Feeling aggrieved, the Industry has preferred the present petition.

Pending this petition, the Industry has closed its business. In view of the closure of the business, by order dated 13th March, 2007 made on Civil Application No.13284/2006 the interim direction to comply with Section 17B of the Act issued against the Industry has been vacated.

Mr.Patel has appeared for the Industry. He has assailed the impugned judgment and award passed by the Labour Court. He has submitted that the charge against the workman was assault to the Works Manager, the highest officer on shopfloor. Such an act of indiscipline and violence on the part of the workman cannot be tolerated. The order of dismissal of the workman from service, therefore, was wholly justified. The learned Labour Judge ought not to have interfered with the same. In support thereof, he has relied upon the judgments of the Hon'ble Supreme Court in the matters of **Mahindra and Mahindra Ltd. V/s. N.B.Narawade** [(2005)3 SCC 134]; of **Muriadih Colliery V/s. Bihar Colliery Kamgar Union** [(2005)3 SCC 331]; of **M.P.Electricity Board v/s. Jagdish Chandra Sharma** [(2005)3 SCC 401]; of **U.P.State Road Transport Corporation v/s. Subhash Chandra Sharma and others** [(2000)3 SCC 324]; of **New Shorrock Mills v/s. Maheshbhai T.Rao** [(1996)6 SCC 590] and of **Punjab Water Supply Sewerage Board and another v/s. Ram Sajivan and another** [2007 III LLJ 156].

He has further submitted that in any view of the

matter, before the Labour Court the validity of the disciplinary proceeding was not challenged. Finding of guilt has been upheld by the Labour Court. If at all the Labour Court found the punishment excessive and exercised its discretionary power under Section 11A of the Act, at the best the workman could have been reinstated in service. But in that case, no back-wages could have been awarded. Besides, in view of the proven guilt of the workman, he ought to have been visited with punishment which, according to the Labour Court, would be just, legal and proportionate. However, in the instant case, the Labour Court has refrained from imposing any other punishment for the guilt proved against the workman. The impugned award of the Labour Court amounts to a reward to the delinquent workman, encouraging insubordination, indiscipline and unruly behaviour amongst the workmen. In support of this submission, Mr.Patel has relied upon the judgment of the Hon'ble Supreme Court in the matter of **J.K.Synthetics Ltd. V/s. K.P.Agrawal and another** [(2007)2 SCC 433].

Mr.Mankad has contested the petition. He has

supported the impugned judgment and award passed by the Labour Court. He has submitted that considering the long service put in by the workman, he could not have been dismissed from service. He has submitted that admittedly for several months the workmen were not paid the wages which led to some altercation. However, there was no incidence of assault as was made out by the Industry. He has also submitted that it is not true that the Industry has closed its business. It is submitted that the business is run by some other agency. It is, therefore, not true to say that the Industry has closed its business.

As recorded hereinabove, the workman did not challenge the legality of the disciplinary proceeding held against him although he did challenge the finding of guilt recorded against him. It appears that the matter was not pressed further in as much as the Labour Court has not considered whether the finding of guilt recorded against the workman was justified or not. Instead, the Court proceeded to exercise discretionary power conferred by Section 11A of the Act. This necessarily means that the learned

Labour Judge did approve or confirm the finding of guilt recorded against the delinquent. The only reason why the learned Labour Judge has interfered with the order of punishment is that of long service and clean service record of the workman. The learned Judge has not considered the gravity of the misconduct proved against the workman. Besides, the learned Labour Judge has not awarded any punishment in lieu of the punishment of dismissal from service. In my view, the incidence of assault by the workman on the Works Manager, a superior officer, was grave enough. Unruly behaviour against the superior officer, if allowed with impunity, would undermine discipline amongst the work force. In my view, although it may be a single act of delinquency, the misconduct proved against the workman was grave enough to warrant dismissal from service. The learned Labour Judge has erred in not considering the gravity of the misconduct itself and was rather carried away by the other factors.

For the aforesaid reasons, I hold that the learned Labour Judge has erred in invoking

discretionary power conferred by Section 11A of the Act; in setting-aside the order of punishment imposed upon the workman; in not imposing any other punishment upon the delinquent workman and; in rewarding the workman by allowing payment of back-wages.

In above view of the matter, the petition is allowed. The impugned judgment and award dated 17th April, 2001 passed by the Labour Court, Vadodara in Reference LCV No.841/1992 is quashed and set-aside. The claim made by the workman stands rejected. Rule is made absolute. The parties will bear their own cost.

(Ms. R.M.Doshit, J.)

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